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EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4104827/20 (A)

Held 15 December 2020

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Employment Judge: R Gall

15 **Ms A McNaught**

Claimant

20 **STA Travel Ltd (In Creditors Voluntary Liquidation)
C/O Rollings Butt LLP**

**Respondent
No appearance and
No representation**

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JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The Judgment of the Employment Tribunal is that: –

1. It is found and declared that the respondents failed to comply with the requirements of Section 188 of the Trade Union and Labour Relations (Consolidation) Act 1992; and
- 30 2. The Tribunal makes a Protective Award in terms of Section 189 of the Trade Union and Labour Relations (Consolidation) Act 1992 in respect of the claimant. The claimant was made redundant on 02 September 2020. The respondents are ordered to pay remuneration to the claimant for the protected period of 90 days, that being the period from 02 September 2020 until 01
35 December 2020.

REASONS

1. This case called for hearing on 15 December 2021. It was not practicable to hold a hearing in person due to the coronavirus pandemic. The hearing took place by video conference facility, CVP. The claimant was unfortunately not able to participate in that hearing due to the very sad circumstance of a family bereavement. The 3 claimants, Mr Carberry, Ms Adie and Mr Dettori, knew and had worked with the claimant. She had, like them, been a store manager with the respondents.
2. As the respondents are in voluntary liquidation, consent of the liquidator to bring proceedings is not required. The claim has been intimated to the liquidator and form ET3 has not been presented intimating any defence to the claim before the cases could be heard.
3. There was in the no evidence from the claimant. The 3 other claimants who gave evidence were able however to speak to her employment situation as “mirroring” theirs. Their evidence was consistent both amongst each other and with the claim from Ms McNaught had submitted. I was prepared to accept that her situation was as the 3 other claimants described. No form ET3 had been lodged. I found the 3 other claimants to be entirely credible and reliable. I was in no doubt as to their honesty.
4. There was no union recognised in the workplace. No employee representatives were elected. The claimant worked in Glasgow. She had been a store manager.
5. The respondents were run from their head office in London with all decisions of a management nature being taken there. HR was a centralised function. Marketing decisions and promotions were instigated and run from the head office. Stores had to follow instructions in relation to marketing. The business operated on the basis of being one unit. There was one file opened for each customer. A customer could visit a store in any location to deal with a booking made through a different store. That was part of the service and image promoted by the respondents. There was a centralised computer system keeping customer records. The on-line booking system was common to all

stores. Customers enquiring about their booking could use the website irrespective of which store had been involved in any booking. There was one telephone number which they could phone to enquire about any aspect of their booking, irrespective of which store had been the one with which they had initially dealt. Sales commissions were split between stores if more than one was involved in a booking or enquiry. There were training events which were attended by personnel from all stores. Staff could be asked to move from one store to another. Some stores were open on Sundays, others were not. If a store was open on a Sunday, customers could attend there or contact that store, regardless of whether they had been dealing with a different store which might be closed on a Sunday.

6. I was satisfied that each store was not a separate establishment for the purposes of the Trade Union and Labour Relations (Consolidation) Act 1992 ("the 1992 Act"). There was no such position adopted in challenge to the claimant's evidence or by way of defence.

7. There were more than 20 employees made redundant by the respondents on 02 September 2020.

8. The claimant had been working for the respondents. She had worked with them for just over 4 years in September 2020.

9. During August 2020 the respondents were rumoured to be in financial difficulty. This was however regarded as an issue for their parent company which was based outside the UK. The UK operation was said to be profitable and employees, including the claimant, derived some comfort from this. The claimant was, with other employees, informed on 02 September 2020 that she was being made redundant. There was no prior discussion whatsoever with the claimant as to redundancy. There is no reason to believe that she had not been spoken to by her employer by way of consultation.

10. The 1992 Act contains obligations on employers where redundancies are contemplated. Those obligations, broadly put, are to consult regarding whether job losses are to take place, if so how many job losses are to be involved and whether anything can be done to mitigate the impact of

redundancies. This is in terms of Section 188 of the 1992 Act. The obligation is to consult a recognised trade union or alternatively for there to be appointment of employee representatives if consultation is to take place. As stated above, there was no recognised trade union in the workplace. No
5 election or appointment of employee representatives took place. There was no individual consultation. The terms of Section 188 were therefore not adhered to.

11. All employees were made redundant over the period 02 September 2020. There was redundancy of more than 100 employees. In that circumstance,
10 the obligation is for consultation to take place at least 90 days prior to the first dismissal taking place. That did not occur.

12. If that obligation to consult is not adhered to the protective award which is to be made in terms of Section 189 of the 1992 Act proceeds on the basis that the starting point is that an award in respect of 90 days is to be made.

13. Payment in respect of that 90 day period is appropriate. The case of *Susie Radin Ltd v GMB & others* 2004 IRLR 400 makes it plain that an Employment Tribunal should start on the basis of a 90 day award. That period can be reduced depending upon the extent of the default and also depending upon whether any special circumstances exist justifying departure from the 90 day
15 period. That is in terms of Section 188 (7) of the 1992 Act.
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14. The case of *Clarks of Hove Ltd v Bakers' Union* 1978 ICR 1076 confirms that a "standard" insolvency does not constitute special circumstances. There was in that case no disaster of a sudden nature or any emergency. It was not said here that there had been a sudden disaster or emergency.
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15. There was no consultation whatsoever. On the basis of the evidence I heard, no special circumstances existed justifying departure from the provisions of the 1992 Act and the obligation of consultation imposed. The protective award

is therefore made in respect of the 90 day period running from 02 September 2020 to 01 December 2020.

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Employment Judge: R Gall
Date of Judgment: 15 December 2021
10 **Entered in register: 05 January 2022**
and copied to parties

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